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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4213

11 **AMERICA Q. DEVERA**
12 **3716 Seneca Avenue**
13 **Los Angeles, CA 90039**

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **56043**

Respondent.

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20 Complainant alleges:

21 **PARTIES**

22 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
23 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

24 2. On or about April 16, 2004, the Board of Pharmacy issued Pharmacy Technician
25 Registration Number TCH 56043 to America Q. Devera (Respondent). The Pharmacy
26 Technician Registration was in full force and effect at all times relevant to the charges brought
27 herein and will expire on September 30, 2013, unless renewed.
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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b) of the Code states:

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

5. Section 4051 of the Code states:

"(a) Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter."

6. Section 4059 of the Code states:

"(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

7. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

8. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

1 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
2 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
3 whether the act is a felony or misdemeanor or not.

4 "(j) The violation of any of the statutes of this state, or any other state, or of the United
5 States regulating controlled substances and dangerous drugs.

6 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
7 violation of or conspiring to violate any provision or term of this chapter or of the applicable
8 federal and state laws and regulations governing pharmacy, including regulations established by
9 the Board.

10 "(p) Actions or conduct that would have warranted denial of a license."

11 9. Section 11152 of the Health and Safety Code provides:

12 "“No person shall write, issue, fill, compound, or dispense a prescription that does not
13 conform to this division.”

14 10. Section 11350 of the Health and Safety Code provides:

15 (a) Except as otherwise provided in this division, every person who possesses (1) any
16 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
17 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
18 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
19 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
20 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
21 licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of
22 Section 1170 of the Penal Code.

23 (b) Except as otherwise provided in this division, every person who possesses any
24 controlled substance specified in subdivision (e) of Section 11054 shall be punished by
25 imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section
26 1170 of the Penal Code."

27 **COST RECOVERY**

28 11. Section 125.3 of the Code provides, in pertinent part, that the
29 Board/Registrar/Director may request the administrative law judge to direct a licensee found to
30 have committed a violation or violations of the licensing act to pay a sum not to exceed the
31 reasonable costs of the investigation and enforcement of the case.

32 **CONTROLLED SUBSTANCES**

33 12. Vicodin and Norco are among the brand names for compounds of varying dosages of
34 acetaminophen (aka AP AP) and Hydrocodone, a Schedule III controlled substance as designated
35 by Health and Safety Code section 11056(e)(4) and dangerous drug as designated by Business
36 and Professions Code section 4022. The varying compounds are also known generically as
37 Hydrocodone. These are all narcotic drugs.

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct-Stealing Controlled Substances)

3 13. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
4 Code, on the grounds of unprofessional conduct for violating in that Respondent admitted to
5 taking six thousand (6000) tablets of Norco and Vicodin from CVS Pharmacy, store # 9661,
6 without a prescription, and sold them from 2009 to 2010, in violation of section 4301, subdivision
7 (f) of the Code. The circumstances are as follows:

8 a. From September 2009 to March 2012, Respondent admitted to assisting another
9 individual by the name of Andrew in getting access to Norco and Vicodin obtained from CVS
10 Pharmacy. Andrew would pay Respondent \$50.00 to \$100.00 every time she assisted him. A
11 total of six bottles were taken overall. Respondent assisted Andrew by placing the bottle in the
12 trash while he came in and took out the trash himself.

13 **SECOND CAUSE FOR DISCIPLINE**

14 (Violation of Controlled Substance Statute)

15 14. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
16 Code, in that Respondent admitted to taking six thousand (6000) tablets of Norco and Vicodin
17 from CVS Pharmacy, store # 9661, without a prescription and sold them from 2009 to 2010, in
18 violation of section 4301, subdivision (j) of the Code. Complainant refers to, and by this
19 reference incorporates, the allegations set forth above in paragraph 13 subparagraph (a), inclusive,
20 as though set forth fully.

21 **THIRD CAUSE FOR DISCIPLINE**

22 (Furnishing Drugs or Controlled Substances without Prescription)

23 15. Respondent is subject to disciplinary action under section 4059, subdivision (a),
24 section 4301, subdivision (o), and section 4051 of the Code, in that Respondent admitted to
25 taking six thousand (6000) tablets of Norco and Vicodin from CVS Pharmacy, store # 9661,
26 without a prescription and sold them from 2009 to 2010, in violation of section 4059, subdivision
27 (a), section 4301, subdivision (o), and section 4051 of the Code. Complainant refers to, and by
28

1 this reference incorporates, the allegations set forth above in paragraph 13 subparagraph (a),
2 inclusive, as though set forth fully.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 (Prescription Required for Controlled Substance)

5 16. Respondent is subject to disciplinary action under sections 4060 and 4051 of the
6 Code, in that Respondent admitted to taking six thousand (6000) tablets of Norco and Vicodin
7 from CVS Pharmacy, store # 9661, without a prescription and sold them from 2009 to 2010, in
8 violation of sections 4060 and 4051 of the Code. Complainant refers to, and by this reference
9 incorporates, the allegations set forth above in paragraph 13 subparagraph (a), inclusive, as
10 though set forth fully.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 (Possession of a Controlled Substance without a Prescription)

13 17. Respondent is subject to disciplinary action under section 11350 of the Health and
14 Safety Code, in that Respondent admitted to taking six thousand (6000) tablets of Norco and
15 Vicodin from CVS Pharmacy, store # 9661, without a prescription and sold them from 2009 to
16 2010, in violation of section 11350 of the Health and Safety Code. Complainant refers to, and by
17 this reference incorporates, the allegations set forth above in paragraph 13 subparagraph (a),
18 inclusive, as though set forth fully.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 (Possession of a Controlled Substance for Sale)

21 18. Respondent is subject to disciplinary action under section 11152 of the Health and
22 Safety Code, in that Respondent admitted to taking six thousand (6000) tablets of Norco and
23 Vicodin from CVS Pharmacy, store # 9661, without a prescription and sold them from 2009 to
24 2010, in violation of section 11152 of the Health and Safety Code. Complainant refers to, and by
25 this reference incorporates, the allegations set forth above in paragraph 13 subparagraph (a),
26 inclusive, as though set forth fully.

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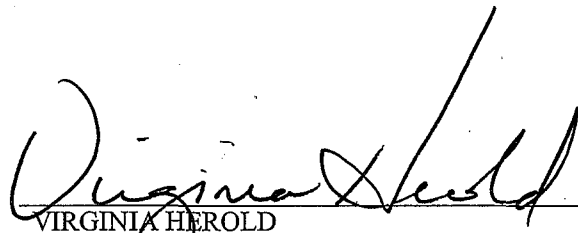
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 56043, issued to America Q. Devera
2. Ordering America Q. Devera to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/15/12



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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